THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO.32070 OF 1997

DATE 31.10.2007

Between:-

B.V.Narasa Reddy.

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PETITIONER

And

The General Manager, Prakasam District Cooperative Central Bank Limited, Ongole & others.

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RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO.32070 of 1997

O R D E R

Questioning the action of the respondents in not paying retiral benefits to the petitioner as illegal and arbitrary and for a consequential direction for payment of all retirement benefits with 18% interest p.a., the present writ petition is filed.

The petitioner, an employee of the first respondent-Bank, was issued charge memo dated 13-05-1995, wherein it was alleged that he had incorporated excess valuation in the valuation certificate and accommodated a borrower for releasing the excess amount. An enquiry was held and the enquiry officer submitted his report on 14-06-1996. Even before an order of punishment could be imposed, the petitioner retired from service. According to the petitioner, he is entitled for gratuity of Rs.1,40,779/-, leave salary of Rs.48,803.40 and interest on gratuity and leave salary of Rs.23,663/- and Rs.8,133.90 respectively. It is stated that the first respondent-Bank, without issuing any show cause notice pursuant to the enquiry report dated 14-06-1996, had passed final orders in surcharge proceedings withholding the aforesaid superannuation benefits.

In the counter affidavit filed on behalf of the first respondent, reliance is placed on a Full Bench judgment of this Court in **Sri Konaseema Cooperative Central Bank Ltd v. N.Seetharama Raju**[1] and the Division Bench judgment in **V.V.S.S.Vara Prasada Rao Patnaik v. The Cooperative Central Bank Limited**[2] to contend that the writ petition is not maintainable against a Cooperative Central Bank since it is not an instrumentality of the

State under Article 12 of the Constitution of India. The first respondent submits that

Sri U.Nageswara Rao and Smt U.Narasamma had applied for a joint tractor loan in 1993-94 through Gudluru Primary Agricultural Cooperative Society, that the valuation of the lands mortgaged was to be obtained from the basic value register maintained in the Sub-Registrar of Assurances, that the petitioner had adopted excess valuation by incorporating incorrect information rendering them eligible for higher finance and, as a result, the bank had sanctioned excess loan of Rs.73,096/- more than their actual eligibility. The first respondent would state that charges were framed and that the enquiry officer had held the charges as proved. According to the first respondent, even after the enquiry was held, some more irregularities committed by the petitioner came to light and the Andhra Pradesh State Cooperative Bank, Hyderabad, vide its letter dated 19-03-1997, had directed that the retiral benefits of the petitioner be stopped except for provident fund. According to the first respondent the loanees failed to repay the annual instalments, execution petition was filed under Section 103 of the A.P.Cooperative Societies Act and the tractor attached, the tractor fetched Rs.1,45,000/- in auction and after adjustment, a sum of Rs.1,16,314/- and Rs.14,123/- was outstanding from the loanees as on 16-07-1996. Thereafter, the loan was closed and the land was brought to sale. It is stated that, as against the total hypothecated land of Ac.33.41 guntas by Sri U. Nageswara Rao & Smt U.Narasamma, they had title only to an extent of Ac.4.00 to Ac.5.00 which is not sufficient to realize the balance amount due to the bank. The first respondent would state that they have no objection for payment of retiral benefits to the petitioner provided the sale proceeds of the lands proposed to be put for sale are sufficient to meet the balance demand in the loan account relating to the tractor. The counter affidavit is dated 06-02-1998 and it is not known what transpired thereafter.

A rejoinder is now handed over across the bar passed on to this Court without a copy thereof even being served on the Standing Counsel appearing for the respondent-Bank. All that is stated in the rejoinder is that, since the first respondent-bank had acted as per the directions of the second respondent and had withheld release of retiral benefits, the writ petition is maintainable. There are no pleadings either in the affidavit or in the rejoinder as to how the first respondent is an instrumentality of the State under Article 12 of the Constitution of India.

Sri P.V.S.S.S.Rama Rao, learned counsel for the petitioner, while fairly conceding that no such averment is made in the writ petition, would submit that, since the bank was discharging public law function of advancing loans to the needy farmers, the writ petition would nonetheless lie. Learned counsel would contend that the petitioner is due to be paid a sum of Rs.1,40,779/- towards gratuity and since payment of gratuity is a statutory liability, a writ petition would nonetheless lie.

It is not even the petitioner's case that the bank owed any public duty towards him and that failure of the bank to discharge such a public duty had necessitated his having to invoke the jurisdiction of this Court. The petitioner is an employee of the first respondent-Bank and the terms and conditions of employment are governed by the contract of employment between him and the first respondent. Termination of services of an employee, or payment of terminal benefits to him by an employer, are not issues amenable to the writ jurisdiction of this Court where the respondent is not an instrumentality of the State under Article 12 of the Constitution of India.

The Payment of Gratuity Act, 1972 (for short 'the Act') itself provides for circumstances under which gratuity can be denied. In any event, as has been held by the Full Bench of this Court in **Sri Konaseema Cooperative Central Bank Ltd**[1]**,** the very same

statute provides for a remedy and it is this remedy which is required to be invoked. Since the petitioner has a remedy under the Act, it is open to him to avail the remedy for payment of the gratuity amount allegedly due. The mere fact that the second respondent had directed the first respondent not to make payment would not entitle the petitioner to seek relief against the first respondent-Bank for payment of gratuity when the first respondent is not an instrumentality of the State under Article 12 of the Constitution of India.

Sri P.V.S.S.S.Rama Rao, learned counsel for the petitioner, would submit that the petitioner be permitted to file an application under the Payment of Gratuity Act and the Controlling Authority be directed to consider the petition without rejecting it on the ground of delay.

The Act itself provides for condonation of delay. I have no reason to doubt that if an application is made within a period of four weeks from the date of receipt of a copy of this order, the Controlling Authority under the Act shall consider such a request on its own merits bearing in mind the fact that the petitioner had invoked the jurisdiction of this Court as early as on 01-12-1997 and the matter has been pending before this Court ever since. Leaving it open to the petitioner to avail the remedy under the Payment of Gratuity Act, the writ petition is dismissed. However, in the circumstances, without costs.

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31-10-2007

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[1] AIR 1990 AP 171

[2] 1996(2) ALT 107